

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CASE NO. 03-90612-MGD
	)	
BONNIE S. HOLLIDAY,	)	CHAPTER 7
	)	
Debtor.	)	JUDGE DIEHL
_____	)	

**ORDER GRANTING TRUSTEE'S MOTION FOR COURT DETERMINATION  
OF ASSETS OF THE BANKRUPTCY ESTATE**

On August 24, 2006, the Court conducted a hearing on the Trustee's Motion Requesting Court Determination of Assets of the Bankruptcy Estate ("Motion"). Present at the hearing were Bonnie S. Holliday ("Debtor") and Robert B. Silliman ("Trustee"). The issue before the Court was whether judgments arising from a pre-petition cause of action (the "Claim") held by Debtor, that was disclosed in Debtor's Statement of Financial Affairs, but not included on Debtor's Schedules, was abandoned to Debtor by operation of law upon the closing of Debtor's case in 2003. The Court, having reviewed the record in this case and heard the arguments of the parties, **GRANTS** Trustee's Motion and **DETERMINES** that Debtor's Claim against Edith S. Brown was not abandoned by Trustee at the close of Debtor's case and is property of Debtor's bankruptcy estate.

**PROCEDURAL HISTORY**

Debtor filed a petition under Chapter 7 of the Bankruptcy Code on January 16, 2003 (03-90612-WHD). Trustee conducted the § 341 Meeting of Creditors on February 14, 2003, and determined that Debtor's estate had no assets. As a result, Trustee filed a Report of No Distribution on February 17, 2003. On April 25, 2003, the Honorable W. Homer Drake entered an order

discharging Debtor and closing the case. (Docket No. 8). Upon Trustee's Motion, Judge Drake reopened the case on June 28, 2005. (Docket No. 14). Debtor's reopened case was reassigned to this Court on November 23, 2005. (Docket No. 27).

### STATEMENT OF FACTS

Debtor's Statement of Financial Affairs, filed with her bankruptcy petition on January 16, 2003, indicated that motions were pending in Fulton County State Court regarding contract claims against Edith S. Brown ("Brown"). Debtor's Claim against Brown arose from a promissory note executed by Brown on September 9, 1997 (Trustee's Exhibit No. 2) and resulted in judgments in Debtor's favor. The State Court of Fulton County entered judgments in favor of Debtor on December 15, 2000, in the amount of \$73,267.75 (Trustee's Exhibit No. 2; Debtor's Exhibit No. 3) and on February 7, 2003, in the amount of \$35,208.00 (Trustee's Exhibit No. 2; Debtor's Exhibit No. 4). The most current calculation indicates that the Claim, with interest through April 3, 2003, totals \$160,103.61 (Debtor's Exhibit No. 5). Debtor's Schedules did not include the Claim or indicate that Debtor held a judgment against Brown.

Brown filed a petition under Chapter 7 of the Bankruptcy Code on April 3, 2003 (03-93833-JB). Debtor timely filed a Proof of Claim against Brown's bankruptcy estate in the amount of \$135,899.27 on November 29, 2004 and reduced her claim to \$125,318.82 on December 17, 2004 (03-93833-JB, Claim Nos. 5 and 6). On or about June 9, 2005, Martha Miller, Trustee in Bankruptcy for Edith S. Brown ("Trustee Miller"), notified Trustee Silliman that the Brown bankruptcy estate had assets and that Debtor had timely filed Proofs of Claim.

On June 7, 2006, Trustee Silliman filed a motion in Brown's Chapter 7 case to be substituted as the real party in interest in relation to Debtor's Claim against the Brown bankruptcy estate.

(03-93833-JB, Docket No. 69). After a hearing on July 12, 2006, The Honorable Joyce Bihary denied Trustee's Motion, finding that it was premature and directing the parties to seek a determination in this Court as to whether Debtor's Claim is an asset of her bankruptcy estate.

#### STATEMENT OF LAW

Abandonment of property of the estate is governed by 11 U.S.C. § 554, which provides:

...

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

Section 554(c), which acts to abandon property by operation of law if such property is not administered at the time the case is closed, refers to property "scheduled" under § 521(1).<sup>1</sup> Courts have strictly construed this provision and held that, to be abandoned under § 554(c), property must be listed on the debtor's Schedules of Assets and Liabilities, not merely on the debtor's Statement of Financial Affairs. Conklin v. St. Lawrence Valley Educ. Television Council, Inc., 1994WL780898, at \*3 (N.D.N.Y. Oct. 31, 1994); In re Fossey, 119 B.R. 268, 272 (Bankr. D. Utah

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<sup>1</sup>Section 541(a)(1) declares that *all* legal and equitable interests of the debtor are property of the estate. The value of a particular interest in property is irrelevant for purposes of determining whether it is an asset of the estate. See In re Potter, 228 B.R. 422, 424 (B.A.P. 9th Cir. 1999). Therefore, any interest in property must be listed as an "asset" on a debtor's Schedules of Assets and Liabilities, regardless of its value.

1990); In re Medley, 29 B.R. 84, 86-87 (Bankr. M.D. Tenn. 1983).<sup>2</sup>

Conklin and Fossey involved debtors who listed property in the form of a cause of action in their Statement of Financial Affairs, but failed to list their causes of action as assets in the Schedules of Assets and Liabilities. Under § 521, the responsibility to file complete and accurate schedules lies with the debtor; even the trustee's actual knowledge that the cause of action existed will not operate to "schedule" the asset and allow abandonment under § 554(c). See Conklin, 1994WL780898, at \*3. Where a cause of action, which has not been administered, is not scheduled under § 521(1), it cannot be abandoned under § 554(c), and is therefore property of the estate pursuant to § 554(d). Id. Even when a debtor files her Schedules of Assets and Liabilities in good faith and failed to identify an interest in property on her schedules through mistake alone, the debtor will not receive the windfall of having that property deemed abandoned by operation of law. See Medley, 29 B.R. at 87.

### CONCLUSION

Like the debtors in Conklin and Fossey, Debtor held an interest in property in the form of a judgment and a pending cause of action, which she disclosed in her Statement of Financial Affairs, but failed to list in her Schedules of Assets and Liabilities as required under § 521(1). Debtor's good faith belief that the judgments she held against Brown, totaling well over \$100,000.00, had no "value" because Brown asserted that she would not pay the judgments did not

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<sup>2</sup>"Reading [sections 554(c) and 521(1)] together leads to the undeniable conclusion that the word 'scheduled' in § 554(c) connotes a listing of the asset in the debtor's schedule of assets and liabilities. If the debtor fails to list an asset of the estate in his schedules and this property is not administered before the case is closed, then the asset is not deemed abandoned under § 554(c)." In re Medley, 29 B.R. at 86-87.

excuse Debtor's obligation to list the Claim on her Schedules of Assets and Liabilities. Further, Trustee's constructive knowledge of the lawsuit does not excuse Debtor's obligation to file complete schedules or affect the Court's analysis of this non-administered property under § 541. Because Debtor did not include the Claim on her Schedules of Assets and Liabilities, it cannot be deemed abandoned under § 541(c). It follows that Debtor's Claim in the Brown bankruptcy case remains property of Debtor's bankruptcy estate pursuant to § 541(d).

For the above reasons, Trustee's Motion is **GRANTED**. Debtor's Claim against Edith S. Brown, including Debtor's claim against Brown's bankruptcy estate, is property of Debtor's bankruptcy estate and Trustee may administer the Claim accordingly.

**SO ORDERED**, this 31<sup>st</sup> day of August, 2006.

Mary Grace Diehl  
MARY GRACE DIEHL, JUDGE  
UNITED STATES BANKRUPTCY COURT